COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on its own motion pursuant to G.L. c. 159, §§ 12 and 16, into Verizon New England Inc., d/b/a Verizon Massachusetts' provision of Special Access Services.	)	**D.T.E. 01-34**

MOTION FOR CONFIDENTIAL TREATMENT

Verizon Massachusetts ("Verizon MA") hereby requests that the Department grant this Motion to provide confidential treatment of data provided by Verizon MA in its response to WorldCom and AT&T Communications of New England, Inc.'s Information Request No. 4-18 ("WCOM/ATT-IR-4-18"). As shown below, that data qualifies as a "trade secret" or "confidential, competitively sensitive, proprietary information" under Massachusetts law and, therefore, is entitled to protection from public disclosure in this proceeding.

ARGUMENT

In determining whether certain information qualifies as a "trade secret,"[1] Massachusetts courts have considered the following:

[1] Under Massachusetts law, a trade secret is "anything tangible or electronically kept or stored which constitutes, represents, evidences or records a secret scientific, technical, merchandising, production or management information design, process, procedure, formula, invention or improvement." Mass. General Laws c. 266, § 30; see also Mass. General Laws c. 4, § 7. The Massachusetts Supreme Judicial Court ("SJC"), quoting from the Restatement of Torts, § 757, has further stated that "[a] trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an

(1) the extent to which the information is known outside of the business;

(2) the extent to which it is known by employees and others involved in the business;

(3) the extent of measures taken by the employer to guard the secrecy of the information;

(4) the value of the information to the employer and its competitors;

(5) the amount of effort or money expended by the employer in developing the information; and

(6) the ease of difficulty with which the information could be properly acquired or duplicated by others.

Jet Spray Cooler, Inc. v. Crampton, 282 N.E.2d 921, 925 (1972). The protection afforded to trade secrets is widely recognized under both federal and state law. In Board of Trade of Chicago v. Christie Grain & Stock Co., 198 U.S. 236, 250 (1905), the U.S. Supreme Court stated that the board has "the right to keep the work which it had done, or paid for doing, to itself." Similarly, courts in other jurisdictions have found that "[a] trade secret which is used in one's business, and which gives one an opportunity to obtain an advantage over competitors who do not know or use it, is private property which could be rendered valueless ... to its owner if disclosure of the information to the public and to one's competitors were compelled." Mountain States Telephone and Telegraph Company v. Department of Public Service Regulation, 634 P.2d 181, 184 (1981).

WCOM/ATT-IR-4-18 contains the number of orders for special access services attributable to Verizon Advanced Data Services, Inc. ("VADI"), the former separate data

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advantage over competitors ... It may be a formula treating or preserving material, a pattern for a machine or other device, or a list of customers." J.T. Healy and Son, Inc. v. James Murphy and Son, Inc., 260 N.E.2d 723, 729 (1970). Massachusetts courts have frequently indicated that "a

affiliate of Verizon Communications. Those orders are reflected in Verizon MA's aggregated data results provided in its Massachusetts-specific, September 7, 2001, special access report submitted in this proceeding. WCOM/ATT-IR-4-18 requests that VADI's orders be separately identified. That material would qualify as "trade secret" or "confidential, competitively sensitive proprietary information" under Massachusetts law because it is customer-specific data that would be of significant business and marketing value to potential competitors and cannot be reasonably duplicated or readily obtained from non-Company sources.

Public disclosure of information relating to the number of orders from VADI in Massachusetts would reveal highly confidential, competitively sensitive information regarding VADI's customer base that could potentially assist competitors in developing their marketing efforts and competitive initiatives for special services in Massachusetts. This is inappropriate, unnecessary and detrimental to Verizon Communications because it would provide an unfair competitive advantage to competitors in this competitive environment by disclosing highly confidential, disaggregated information that is not relevant to the issues to be decided in this proceeding. Moreover, this is the very anti-competitive result that state and federal laws protecting trade secret information are designed to prevent.

In addition, a VADI-specific breakdown is not warranted - and certainly should not be made publicly available - since comparable information has not been provided in this proceeding on a carrier-specific basis regarding other carrier or end-user customers. On June 1, 2001, Verizon MA filed a similar Motion for Confidential Treatment of

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trade secret need not be a patentable invention." Jet Spray Cooler, Inc. v. Crampton, 385 N.E.2d 1349, 1355 (1979).

customer-specific provisioning data provided in its Special Access Reports in this proceeding. The same arguments to protect *other* customer data would apply to VADI data, as stated in these respective Motions. There is no reasonable basis to treat customer-specific data differently for confidentiality purposes.

A standard Protective Agreement would properly limit the use of customer-specific (*i.e.*, VADI) data to the preparation and conduct of this proceeding. This is intended to prevent actual and potential competitors from unduly and unfairly benefiting from access to that data by using it to their commercial and competitive advantage. Accordingly, the number of VADI special access orders in Massachusetts should be considered Verizon's "private property" and a "trade secret" and, therefore, not subject to public disclosure.

Finally, no party has filed any objection to Verizon MA's provision of WCOM/ATT IR-4-18 pursuant to a Protective Agreement. Likewise, no compelling need exists for public disclosure of Verizon MA's proprietary response to WCOM/ATT-IR-4-18 for the Department to consider this material in connection with issues raised in this proceeding. Accordingly, Verizon MA's interest in preserving the confidentiality of the data should far outweigh any interest in public disclosure, which would only serve to aid the Company's competitors and provide them with unbridled access to highly sensitive information by placing it in the public domain.

WHEREFORE, Verizon MA respectfully requests that the Department grant this Motion to afford confidential treatment to customer-specific (*i.e.*, VADI) data provided in response to WCOM/ATT-IR-4-18. As demonstrated above, that information is entitled to such protection, and no compelling need exists for public disclosure in this proceeding.

Respectfully submitted,

VERIZON MASSACHUSETTS

Its Attorney,

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Dated: March 6, 2002